

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Promote Policy  
and Program Coordination and Integration in  
Electric Utility Resource Planning.

Rulemaking 04-04-003  
(Filed April 1, 2004)

Order Instituting Rulemaking to Promote  
Consistency in Methodology and Input  
Assumptions in Commission Applications of  
Short-run and Long-run Avoided Costs,  
Including Pricing for Qualifying Facilities.

Rulemaking 04-04-025  
(Filed April 22, 2004)

**JOINT RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E),  
SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), SAN DIEGO GAS &  
ELECTRIC COMPANY (U 902-E), THE UTILITY REFORM NETWORK,  
AND THE DIVISION OF RATEPAYER ADVOCATES TO APPLICATIONS FOR  
REHEARING OF DECISION 07-09-040**

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November 9, 2007

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REHEARING OF DECISION 07-09-040**

Pursuant to Rule 16.1 of this Commission's Rules of Practice and Procedure ("Rules"), Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), San Diego Gas & Electric Company ("SDG&E"), The Utility Reform Network ("TURN") and The Division of Ratepayer Advocates ("DRA") (collectively, the "Joint Parties") file this Response to the Applications for Rehearing of D.07-09-040 (the "Decision") filed by the California Cogeneration Council ("CCC"), and the Cogeneration Association of California and the Energy Producers and Users Coalition (collectively, "CAC/EPUC").<sup>1</sup>

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<sup>1</sup>

Pursuant to Commission Rule 1.8(d), SCE is authorized to submit this Response on behalf of itself and all other Joint Parties.

## I.

### **THE COMMISSION SHOULD REJECT CCC'S CLAIMS OF LEGAL ERROR**

CCC makes three claims of legal error. As discussed below, all of CCC's claims of error are meritless and should be rejected.

#### **A. The Record Contradicts CCC's Claim That The Decision's As-Available Capacity Price is Too Low**

CCC argues that the as-available capacity price of \$32.53/kW-year the Decision adopts is too low and asserts the price should be \$64.77/kW-year.<sup>2/</sup> CCC claims the adopted price constitutes legal error for two reasons, neither of which is valid.

First, CCC asserts the adopted price "relies on stale data rather than more-current information in the record of this proceeding supporting a higher as-available capacity price."<sup>3/</sup> Contrary to this assertion, the record supports the \$32.53/kW-year value adopted in the Decision.

The Decision adopted an as-available capacity price of \$32.53/kW-year based on the \$64.13/kW-year real economic carrying charge for a combustion turbine, as TURN proposed, less \$14.82/kW-yr of ancillary services and \$16.78/kW-year of energy rents.<sup>4/</sup> CCC bases its claim that the as-available capacity price is too low on the assertion that "TURN derives its proposed CT capital cost of \$523 per kW from a 2003 CEC study that is outdated and too low . . . ."<sup>5/</sup> This assertion is not only wrong, but also is contrary to the record.

In fact, TURN's calculation of the \$64.13/kW-year real economic carrying charge already accounted for increases in capital costs since the issuance of the CEC study. In addition to making other updates and corrections to the CEC study, TURN witness Marcus testified that he "added 10% to the CEC's capital cost (2004 dollars) for conservatism . . . ."<sup>6/</sup> Thus, CCC's claim that TURN used an outdated combustion turbine capital cost is contradicted by the record.

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<sup>2/</sup> See CCC App. for Reh'g at 4-5.

<sup>3/</sup> *Id.* at 2.

<sup>4/</sup> See Decision at 96.

<sup>5/</sup> CCC App. for Reh'g at 4.

<sup>6/</sup> TURN Opening Testimony, Ex. 149 at B-2.

The Decision appropriately recognized that “firm, unit-contingent capacity is more valuable than as-available capacity because, it is much more predictable and, therefore, much more reliable. Thus, firm power and as-available power cannot be priced identically.”<sup>7/</sup> The Commission properly exercised its discretion in selecting TURN’s as-available capacity value over the inflated as-available capacity value CCC proposed.

Furthermore, CCC’s proposed “update” to TURN’s value is fundamentally flawed. CCC claims that it “supplied evidence of the 2005 RAMCO value of \$747 per kW . . .” and that, using this value, the Commission could develop “a more up-to-date annual CT cost of \$96.37 per kW-year.”<sup>8/</sup> The record citation CCC supplies is to “CCC/Beach Ex. 102 at p. 51-52.”<sup>9/</sup> However, CCC’s “value of \$747 per kW” does not appear on these pages or anywhere else in CCC’s testimony. Thus, there is no record evidence to establish CCC’s claim.

CCC’s second argument is also baseless. Specifically, CCC asserts that “the Commission has relied on this more recent information in other recent decisions on short-run capacity pricing and has adopted higher short-run capacity values, and it should do so here.”<sup>10/</sup> However, there is no record support for this argument either, which is based again on CCC’s claim that the “capital costs for the RAMCO CT were \$747 per kW.”<sup>11/</sup>

This time CCC explains its deviation in a footnote that relies on SDG&E’s Advice Letter E-1621-E.<sup>12/</sup> This derivation repeats almost verbatim the same argument CCC made in comments on the alternate proposed decision the Commission ultimately adopted.<sup>13/</sup> The problem with this argument is that SDG&E’s advice letter is not part of the evidentiary record in

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<sup>7/</sup> Decision at 92.

<sup>8/</sup> CCC App. for Reh’g at 5.

<sup>9/</sup> *Id.* at 5 n.12.

<sup>10/</sup> *Id.* at 2.

<sup>11/</sup> *Id.* at 4.

<sup>12/</sup> *See id.* at 4 n.10.

<sup>13/</sup> *See* CCC’s Comments on the Alternate Proposed Decision of Commissioner Grueneich, dated September 10, 2007 at 14.

this proceeding. Thus, CCC is improperly attempting to rely on new evidence in its rehearing application, just as it did in its comments.

The Commission has held that new evidence is improper in post-hearing briefs. As the Commission stated in Decision 88-09-61:

The purpose of a post-hearing brief is to provide the parties with an opportunity to put forth their views of the appropriate interpretation of the evidence presented in the hearing in the light of applicable law. ***It is not a forum for producing new evidence, whether or not it is relevant and authentic. Such evidence might be the subject of a motion to reopen or some similar procedural device,*** if there is good cause why the evidence could not have been produced in a timely manner.... ***As with any other evidence the request that it be recognized should properly be made during a hearing, not afterward. (See, by analogy, California Evidence Code, Sections 452 and 455.) While it is rather meaningless to strike statements in post-hearing briefs, we will grant Pacific's motion to the extent that we will decline to take official notice of these documents and will accord them no weight in this decision.***<sup>14/</sup>

This rationale applies with even greater force to an application for rehearing, submitted not only after submission of the record, but after the issuance of a final decision. Neither of CCC's arguments finds support in the record, and the Commission should summarily reject them.

Moreover, CCC improperly seeks to *selectively* "update" only one component of the as-available capacity price. CCC proposes to "update" only the combustion turbine fixed charge component of the as-available capacity price. However, the Decision recognizes that, to properly calculate the price of as-available capacity, the combustion turbine fixed charge must be reduced by energy savings and ancillary services revenues.<sup>15/</sup> The Commission cannot "update" the combustion turbine fixed charge component, as CCC proposes, without also updating the deductions for energy savings and ancillary services revenues.

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<sup>14/</sup> D.88-09-061, 1988 Cal. PUC LEXIS 643, at \*4-6, 29 Cal. PUC 2d 404 (*emphasis added*).

<sup>15/</sup> See Decision at 96.

Finally, the Commission cannot simply increase TURN's \$64.13/kW-year value "by the ratio of the CT capital costs, i.e. by \$747/kW divided by \$523/kW[.]" as CCC proposes.<sup>16/</sup> The record evidence plainly demonstrates that TURN's \$64.13/kW-year real economic carrying charge is not comprised solely of capital costs, as CCC appears to assume.<sup>17/</sup> Instead, TURN's real economic carrying charge includes *all* fixed cost components, such as property taxes, insurance and fixed O&M.<sup>18/</sup> The ratio CCC proposes is solely a ratio of capital costs. As a result, it cannot properly be applied to TURN's real economic carrying charge. CCC's proposal to increase TURN's \$64.13/kW-year value has no support in the record and is factually wrong. The Commission should reject it.

**B. There Is No Inconsistency In The Commission's Adoption Of An O&M Adder**

On page 69 of the Decision, the Commission explains that "[t]he O&M adder accounts for the variable O&M expenses incurred by the utility to produce energy..." and adopts an adder of \$2.60/MWh in 2006.<sup>19/</sup> CCC claims "the Decision is internally inconsistent because the O&M Adder value adopted by the Commission fails to account for Selective Catalytic Reduction ("SCR") costs and other new environmental costs, even though the Decision states that '[v]ariable generating costs today also include air emission credit costs and periodic costs to replace expensive catalysts in air emission control equipment.'"<sup>20/</sup> CCC cites the Decision at page 28.

Because the Decision does not reference the "SCR and water treatment" costs CCC cited in its testimony as a component of the \$2.60/MWh, CCC assumes that the \$2.60/MWh value does not include all appropriate components of variable O&M expenses. CCC cites no evidence

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<sup>16/</sup> CCC App. for Reh'g at 5 n.13.

<sup>17/</sup> See TURN Opening Testimony, Ex. 149 at B-1-B-4.

<sup>18/</sup> See *id.*

<sup>19/</sup> Decision at 69.

<sup>20/</sup> CCC App. for Reh'g at 6.

in the record to support this assumption and, indeed, there is none. The more logical assumption is that the \$2.60/MWh covers all variable O&M expenses the Commission deemed reasonable to include. There is no inconsistency in the Decision on this issue and certainly no legal error.

### **C. CCC's Argument Regarding The Transition to MRTU Pricing Is Premature**

The Decision provides that “[s]ix months after the implementation of the CAISO’s day-ahead market the MIF shall be revised to remove the administrative heat rate component and base the IER exclusively on MRTU market prices.”<sup>21/</sup> CCC claims that this aspect of the Decision lacks record support.<sup>22/</sup> This argument is premature.

The Decision recognizes that MRTU is not yet operational and “direct[s] the Energy Division to monitor the operation of the CAISO markets, in close consultation with the CAISO’s market monitoring group” once MRTU is implemented.<sup>23/</sup> Furthermore, the Decision provides for further consideration of this issue through workshops and advice letter proceedings.<sup>24/</sup> Accordingly, CCC’s concerns regarding transition to MRTU pricing are not ripe and should be rejected.

## **II.**

### **THE COMMISSION SHOULD REJECT CAC/EPUC’S UNSUBSTANTIATED AND UNFOUNDED CLAIMS OF LEGAL ERROR**

CAC/EPUC make two vague claims of legal error, both of which should be rejected.

First, CAC/EPUC claim that the pricing under the Prospective QF Program “does not strictly meet” the requirements of state and federal law.<sup>25/</sup> CAC/EPUC then assert “To the extent that the Decision is inconsistent with existing law, the Decision is in error.”<sup>26/</sup> The Joint Parties

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<sup>21/</sup> Decision at 68.

<sup>22/</sup> CCC App. for Reh’g at 6-9.

<sup>23/</sup> Decision at 67-68.

<sup>24/</sup> *Id.* at 67.

<sup>25/</sup> CAC/EPUC App. for Reh’g at 2.

<sup>26/</sup> *Id.* at 3.

agree that the Decision commits legal error in several respects, as detailed in the Joint Parties' Application for Rehearing. CAC/EPUC, however, fail to delineate how they believe the Decision errs.

Public Utilities Code section 1732 requires that an "application for a rehearing [] set forth *specifically* the ground or grounds on which the applicant considers the decision or order to be unlawful."<sup>27/</sup> The Commission's Rules explain that "The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously."<sup>28/</sup> CAC/EPUC's application for rehearing completely fails comply with the requirements of section 1732 and, as a result, fails to alert the Commission to any error; therefore, the Commission should reject CAC/EPUC's claim of error.

CAC/EPUC's second claim of error is that "reliance on the current record, which did not allow QF parties access to relevant data, is unlawful."<sup>29/</sup> CAC/EPUC claim that 18 C.F.R. § 292.302 (one of the federal regulations implementing PURPA) requires disclosure of "the last incremental purchase on the margin" and that "this relevant information was not provided to the QF parties."<sup>30/</sup> This argument is based on a misreading of 18 C.F.R. § 292.302, the record in this proceeding, and the Commission's decisions implementing PURPA.

18 C.F.R. § 292.302(b), in pertinent part, provides:

To make available data from which avoided costs may be derived,  
... each regulated electric utility ... shall provide to its State  
regulatory authority, and shall maintain for public inspection, ...  
the following data:

(1) The estimated avoided cost on the electric utility's system,  
solely with respect to the energy component, for various levels of  
purchases from qualifying facilities. Such levels of purchases shall  
be stated in blocks of not more than 100 megawatts for systems

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<sup>27/</sup> Cal. Pub. Util. Code § 1732 (*emphasis added*).

<sup>28/</sup> Rule 16.1(c).

<sup>29/</sup> CAC/EPUC App. for Reh'g at 3.

<sup>30/</sup> *Id.*

with peak demand of 1000 megawatts or more, and in blocks equivalent to not more than 10 percent of the system peak demand for systems of less than 1000 megawatts. The avoided costs shall be stated on a cents per kilowatt-hour basis, during daily and seasonal peak and off-peak periods, by year, for the current calendar year and each of the next 5 years;

(2) The electric utility's plan for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding 10 years; and

(3) The estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases.<sup>31/</sup>

As the Federal Energy Regulatory Commission (FERC) has explained, this regulation “require[s] electric utilities to make available *certain* system cost data . . . .”<sup>32/</sup> FERC has ruled that disclosure of “generic cost data” is sufficient to comply with 18 C.F.R. § 292.302,<sup>33/</sup> the regulation does not require disclosure of data that would “violat[e] the confidentiality of [a] competitive solicitation process [or] undermin[e] [a utility’s] efforts to implement an integrated resource plan designed to obtain the lowest cost resources to meet the power supply needs of [its customers].”<sup>34/</sup>

In *Tennessee Power Co.*, the utility provided generic estimates of annual avoided energy costs and a range of estimated costs for capacity resources to comply with 18 C.F.R. § 292.302.<sup>35/</sup> The utility noted that it used a competitive solicitation process “to implement an integrated resource plan designed to obtain the lowest cost resources to meet the power supply

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<sup>31/</sup> 18 C.F.R. § 292.302(b).

<sup>32/</sup> *Tennessee Power Co.*, 77 FERC ¶ 61,125, 61,482 (1996) (*emphasis added*).

<sup>33/</sup> *Id.* at 61,483-85.

<sup>34/</sup> *Id.* at 61,484.

<sup>35/</sup> See Tennessee Valley Authority’s Motion to Intervene, Answer and Protest, FERC Docket No. EL 96-64-000, at 18-20 (Aug. 8, 1996).

needs of the . . . region[.]” and that disclosure of detailed cost information would undermine the competitive solicitation process.<sup>36/</sup> FERC declined to initiate an enforcement action to either review the data provided by the utility or to require the utility to provide additional data.<sup>37/</sup>

The record in this proceeding demonstrates that the Commission gave the QF parties access to cost data comparable to the cost data the utility provided in *Tennessee Power Co.* In *Tennessee Power Co.*, the utility provided generic estimates of annual avoided energy costs and a range of estimated costs for capacity resources.<sup>38/</sup> In this proceeding, the QF parties were, *inter alia*, given unrestricted access to extensive quarterly historical and forecast utility cost data.<sup>39/</sup> In addition, the QF parties were given access to market-sensitive and proprietary monthly and hourly utility information subject to a protective order.<sup>40/</sup> Thus, the record belies CAC/EPUC’s claim that QF parties were denied access to relevant information.

Furthermore, the states have discretion to modify the data requirements of 18 C.F.R. § 292.302.<sup>41/</sup> As the Commission recognized in OIR No. 2, “[t]he Commission is [] authorized to review the electric utility system cost data used to calculate a utility’s avoided cost *and to require different data than that specified by the FERC . . . .*”<sup>42/</sup> Pursuant to 18 C.F.R. § 292.302(d), “State regulatory authorities are allowed to impose different data requirements after notice and opportunity for public comment.”<sup>43/</sup> 18 C.F.R. § 292.302(d) provides:

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<sup>36/</sup> *Tennessee Power Co.*, 77 FERC at 61,484.

<sup>37/</sup> *Id.* at 61,482, 61,485.

<sup>38/</sup> See Tennessee Valley Authority’s Motion to Intervene, Answer and Protest, FERC Docket No. EL 96-64-000, at 18-20 (Aug. 8, 1996).

<sup>39/</sup> See Decision at 137-39; Administrative Law Judges’ Ruling On Protective Order And Remaining Discovery Disputes (May 9, 2005).

<sup>40/</sup> See Decision at 137-39.

<sup>41/</sup> *Tennessee Power Co.*, 77 FERC at 61,484-85; 18 C.F.R. § 292.302(d).

<sup>42/</sup> OIR No. 2, 1980 Cal. PUC LEXIS 1300 (Sep. 3, 1980) (*emphasis added*).

<sup>43/</sup> D.82-01-103, 8 Cal. PUC 2d 20, 36 (1982); see also D.83-10-093, 13 Cal. PUC 2d 84, 96 (1983) (“[F]ederal regulations [] permit state regulatory authorities to alter the FERC [data] requirements after notice and opportunity for public comment.”).

After public notice in the area served by the electric utility, and after opportunity for public comment, any State regulatory authority may require (with respect to any electric utility over which it has ratemaking authority) . . . *data different than those which are otherwise required by this section* if it determines that avoided costs can be derived from such data.<sup>44/</sup>

Over the years, the Commission has exercised this authority to tailor the utility data filing requirements to the applicable mechanism for determining avoided cost. For example, in D.82-01-103, the Commission ordered the utilities to file, *inter alia*, energy cost data, a resource plan, operations and maintenance cost data, and line loss data.<sup>45/</sup> In D.83-10-093, the Commission modified D.82-01-103 to require the utilities to file energy-related data and energy price revisions in their ECAC proceedings and to file capacity price revisions in their general rate cases.<sup>46/</sup> QF capacity payments continued to be addressed in each utility's general rate case, until 1988 when the Commission decided it would be determined in each utility's ECAC instead.<sup>47/</sup> Since that time, however, the State enacted Public Utilities Code section 390 as part of restructuring the industry, which adopted a formula (the Transition Formula) that calculates QF payments using data different from that specified in 18 C.F.R. § 292.302.

The data required under 18 C.F.R. § 292.302 need only be sufficient to calculate avoided cost.<sup>48/</sup> Like the Transition Formula, the Market Index Formula (MIF) adopted by the Decision calculates QF payments using data different from that specified in 18 C.F.R. § 292.302. By adopting the MIF, the Commission adopted the use of alternative data for calculating QF payments. As a result, the specific data listed in 18 C.F.R. § 292.302(b) are not applicable here. CAC/EPUC's argument that QF parties were denied access to relevant information is without merit and should be rejected.

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<sup>44/</sup> 18 C.F.R. § 292.302(d) (*emphasis added*).

<sup>45/</sup> See D.82-01-103, 8 Cal. PUC 2d at 36-37; see also D.83-10-093, 13 Cal. PUC at 98-100.

<sup>46/</sup> See D.82-01-103, 8 Cal. PUC 2d at 36-37; see also D.83-10-093, 13 Cal. PUC 2d 84, 98-100.

<sup>47/</sup> See D.88-03-026 and D.88-03-079.

<sup>48/</sup> See D.82-01-103, 8 Cal. PUC 2d at 36-37 ("The data required must be sufficient . . . for qualifying facilities to reasonably forecast the direction of avoided cost over time."); 18 C.F.R. § 292.302(b).

### III.

#### CONCLUSION

For all the foregoing reasons, the Joint Parties respectfully request that the Commission reject CCC and CAC/EPUC's Applications for Rehearing.

Respectfully submitted,

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November 9, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of the "**JOINT RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E), THE UTILITY REFORM NETWORK, AND THE DIVISION OF RATEPAYER ADVOCATES TO APPLICATIONS FOR REHEARING OF DECISION 07-09-040**" on all parties identified on the attached service list. Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **9th day of November 2007**, at Rosemead, California.

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Friday, November 9, 2007

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Friday, November 9, 2007

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R.04-04-025

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4539 LEE AVENUE  
LA MESA, CA 91941  
R.04-04-025

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**R.04-04-025**

Friday, November 9, 2007

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ANDOVER, MA 1810  
R.04-04-025

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R.04-04-025

CALIFORNIA ENERGY MARKETS  
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R.04-04-025

MRW & ASSOCIATES, INC.  
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OAKLAND, CA 94612  
R.04-04-025

**R.04-04-003 QF Issues**  
Friday, November 9, 2007

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R.04-04-003 QF Issues

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R.04-04-003 QF Issues

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**R.04-04-003 QF Issues**  
Friday, November 9, 2007

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**R.04-04-003 QF Issues**  
Friday, November 9, 2007

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R.04-04-003 QF Issues

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R.04-04-003 QF Issues

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R.04-04-003 QF Issues

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R.04-04-003 QF Issues

**R.04-04-003 QF Issues**  
Friday, November 9, 2007

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R.04-04-003 QF Issues

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R.04-04-003 QF Issues

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**R.04-04-003 QF Issues**  
Friday, November 9, 2007

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R.04-04-003 QF Issues

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R.04-04-003 QF Issues

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**R.04-04-003 QF Issues**  
Friday, November 9, 2007

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**R.04-04-003 QF Issues**  
Friday, November 9, 2007

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